

CHAPTER 1 OVERVIEW AND PURPOSE AND NEED FOR ACTION

1.1 INTRODUCTION

On May 20, 2008, R.J. Corman Railroad Company/Pennsylvania Lines Inc. (RJCP)¹ filed a petition with the Surface Transportation Board (Board),² pursuant to 49 U.S.C. § 10502 and 49 C.F.R. § 1121, for exemption from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate an abandoned 10.8-mile rail line between Wallaceton and Winburne in Clearfield County, Pennsylvania (the Western Segment) and to reactivate a connecting 9.3-mile portion of currently rail banked³ line between Winburne and Gorton in Clearfield and Centre Counties, Pennsylvania (the Eastern Segment) (together, the Proposed Action). Both the Eastern and Western Segments would be operated by RJCP to serve a new landfill, quarry, and industrial park currently being developed by Resource Recovery, LLC (RRLLC)⁴ near Gorton, Pennsylvania, as well as several other interested shippers along the rail line. Figure 1-1 shows the location of both the Western and Eastern Segments of the proposed rail line.

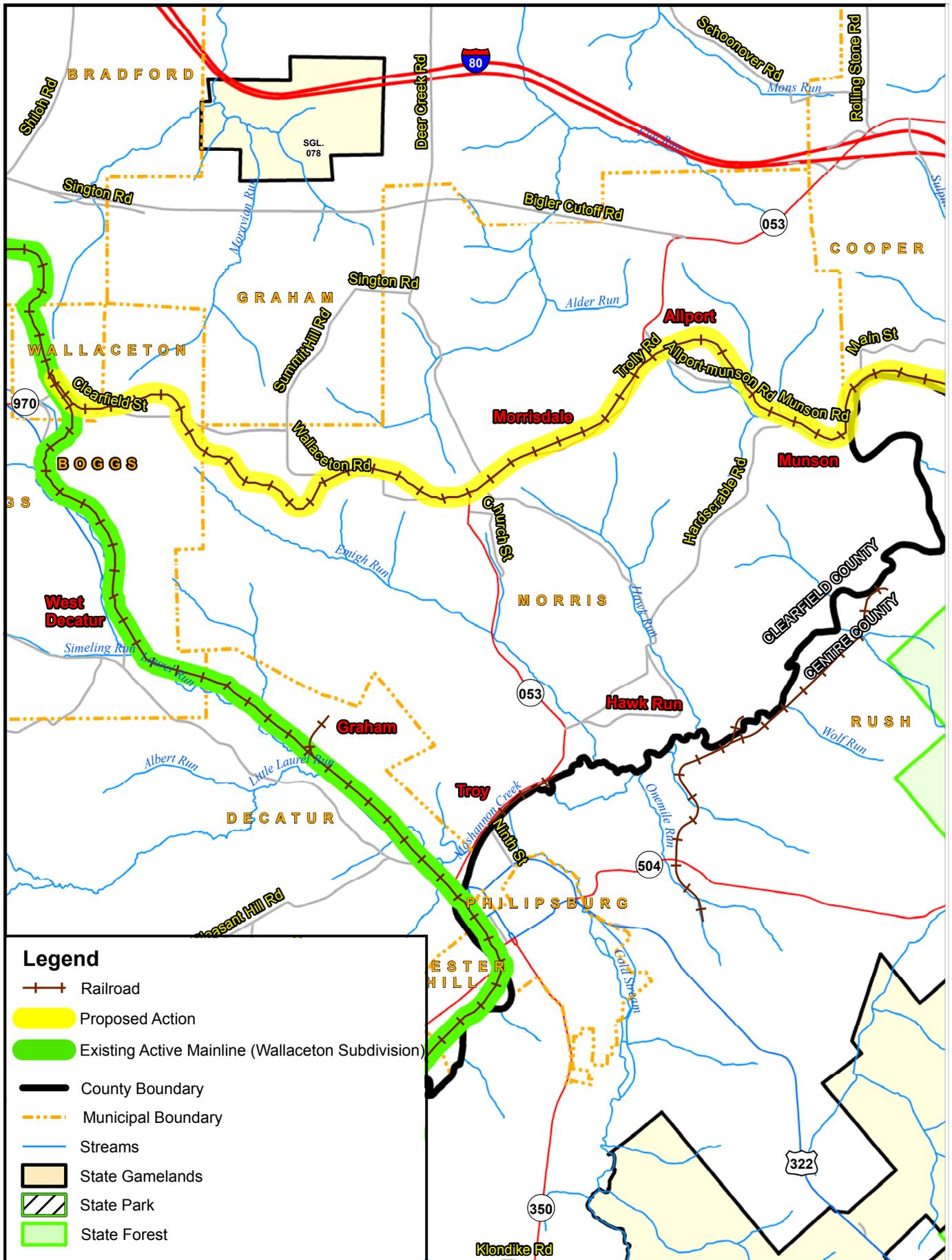
A member of the public identified an alternate route for a portion of the Western Segment at the project's initial public scoping meeting (held on February 10, 2009). This alternate route continues use of RJCP's existing Wallaceton Subdivision line south of Wallaceton to a point near Philipsburg where a new connection would be built to another 5.8-mile abandoned rail line leading northeast to Munson (formerly referred to as the Philipsburg Industrial Track). From Munson eastward to Winburne, the Western Segment remains unchanged from RJCP's original petition. Thus, a portion

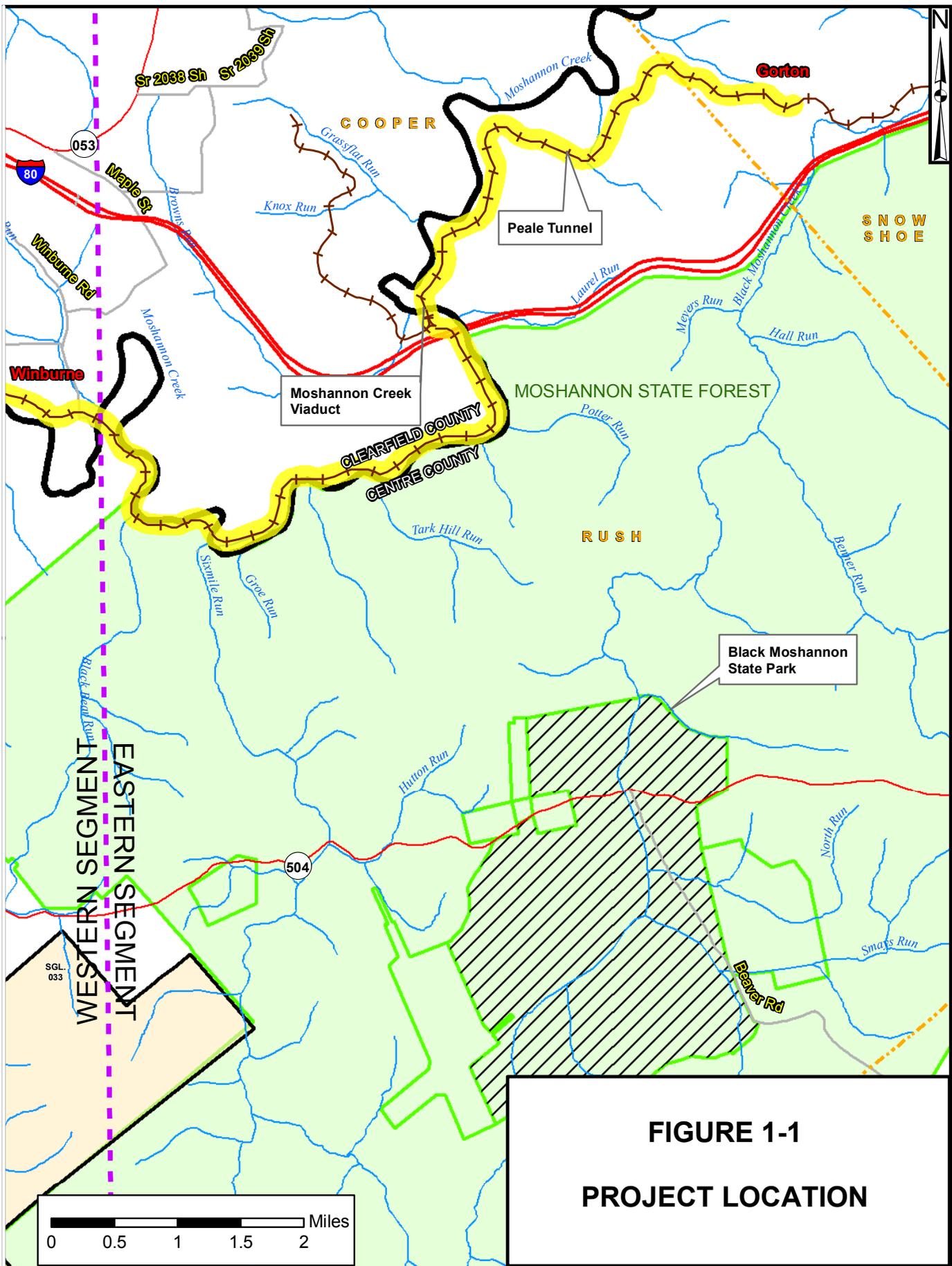
¹ Operating out of Clearfield, Pennsylvania, RJCP is one of a family of short line railroad operators controlled directly by R.J. Corman Railroad Group, LLC, based in Nicholasville, Kentucky. R.J. Corman Railroad Group, LLC, is majority-owned and controlled by Richard J. Corman. RJCP is a Class III railroad, and the acquisition of its current lines in the vicinity of Clearfield, Pennsylvania was authorized pursuant to R.J. Corman R.R. Co./Pa. Lines Inc. – Acquis. and Operation Exemption – Lines of Consol. Rail Corp., FD 32838 (STB served Jan. 26, 1996). RJCP operates over a former Consolidated Rail Corporation (Conrail) light density line that extends from an interchange with the Norfolk Southern Railway Company (NS) at Keating, through Clearfield and Wallaceton, to Osceola Mills, Pennsylvania.

² The Surface Transportation Board is a bipartisan, decisionally independent adjudicatory body, organizationally housed within the U.S. Department of Transportation (USDOT). The Board was established by the Interstate Commerce Commission (ICC) Termination Act of 1995 (49 U.S.C. § 10101 *et seq.*; P.L. 104-88, December 29, 1995) to assume certain regulatory functions that the ICC administered. The Board has jurisdiction over rail constructions, rail abandonments, rail rates, railroad acquisitions, and consolidations. Other functions of the ICC were either eliminated or transferred to different agencies within USDOT

³ In 1983, concerned by the rapid contraction of America's rail network, Congress amended the National Trails System Act to create the rail banking program. Rail banking is a method by which rail lines authorized for abandonment can be preserved for future rail use through interim use as a trail. A rail banked line is not treated as abandoned. See 16 U.S.C. § 1247(d). Instead, the right-of-way is "rail banked," which means that the railroad is relieved of the current obligation to provide service over the line but that the railroad (or any other approved rail service provider) may reassert control to restore service on the line at any point in the future. If and when the railroad wishes to restore rail service on all or part of the property, it has the right to do so, and the trail user must step aside. See Birt v. STB, 90 F.3d 580, 583 (D.C. Cir. 1996); Iowa Power–Constr. Exempt.–Council Bluffs, IA, 8 I.C.C.2d 858, 866-67 (1990); 49 C.F.R. § 1152.29(c)(2), (d)(2); Ga. Great S. Div.—Abandon. & Discontinuance of Serv., 6 S.T.B. 902, 906 (2003).

⁴ RRLLC is a privately owned company located in Mountville, Pennsylvania, that was created to undertake an economic development project located near Gorton in Rush Township, Centre County, Pennsylvania. In accordance with RJCP's petition, RRLLC's proposed development project is to include a landfill, sand and gravel quarry, and industrial park. None of the R.J. Corman companies, including RJCP or its non-rail carrier affiliates, has any affiliation with RRLLC through stock ownership, control or otherwise.





of the Western Segment has been divided into two separate routes for consideration, namely RJCP's original "Wallaceton to Munson Route" and the more recently proposed "Alternate Route from Philipsburg to Munson." Figure 1-2 shows the locations of these two alternate routes to Munson, including a proposed new connection area associated with the Alternate Route from Philipsburg to Munson.

The Board, pursuant to 49 U.S.C. § 10901, is the federal agency responsible for authorizing the construction and operation of new rail lines. In this capacity, the Board, through its Section of Environmental Analysis (SEA), is the lead agency responsible under the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.* (NEPA) for the preparation of this Draft Environmental Impact Statement (EIS). The U.S. Army Corps of Engineers (USACE) - Baltimore District and the Federal Highway Administration (FHWA) - Pennsylvania Division are acting as cooperating agencies for the preparation of this EIS.⁵ SEA and the cooperating agencies (collectively, the Agencies) have prepared this Draft EIS in accordance with NEPA, the Council on Environmental Quality (CEQ) regulations for implementing NEPA (found at 40 C.F.R. § 1500), and the Board's own environmental regulations (found at 49 C.F.R. § 1105) to provide the Board; the cooperating agencies; other federal, state, and local agencies; and the public with clear and concise information on the potential environmental impacts of the proposed project and reasonable and feasible alternatives. This Draft EIS has also been prepared in accordance with USACE's Section 404(b)(1) environmental permitting guidelines, as well as FHWA's Environmental Impact and Related Procedures (found at 23 C.F.R. § 771).

The Agencies are issuing this Draft EIS for public review and comment. In preparing the Final EIS, the Agencies will consider all comments received and will respond to all substantive comments. The Final EIS will include the Agencies' final recommended environmental mitigation conditions, as applicable. The Board will consider the entire environmental record, the Draft and Final EIS, all public and agency comments, and SEA's environmental recommendations in making its final decision on RJCP's petition to construct, operate, and reactivate the proposed rail line. The Board will decide whether to approve, approve with conditions (which could include conditions designed to mitigate environmental impacts), or deny the Proposed Action.

1.2 BACKGROUND

RJCP seeks to provide rail service over a roadbed that was originally constructed in 1883 and 1884 by the Beech Creek Railroad Company to serve coal mines located in Clearfield and Centre Counties, Pennsylvania. That line eventually became part of the New York Central Railroad Company and later part of the Penn Central Transportation Company. The rail line was transferred to Conrail on April 1, 1976. During the 1980s and 1990s, coal production from area mines dwindled to levels that could not sustain railroad operations. As a result, Conrail requested and received authority to abandon what it was calling the Snow Shoe Industrial Track, from Winburne through Gorton to Gillintown, in Conrail Aban. of the Snow Shoe Indus. Track in Centre and Clearfield Cntys., Pa., AB 167 (Sub-No. 1004N) (ICC served Feb. 15, 1990). Conrail's former Snow Shoe Industrial Track encompasses the Eastern Segment of this project (i.e., Winburne to Gorton).⁶ In

⁵ Pursuant to 40 C.F.R. § 1501.5 and 40 C.F.R. § 1501.6, agencies that have jurisdiction under other laws or that have "special expertise" may participate as cooperating agencies in the Board's environmental review process.

⁶ While Winburne to Gorton was the western portion of the former Snow Shoe Industrial Track, RJCP now refers to this same section as the "Eastern Segment" because it is the eastern portion of the Proposed Action.

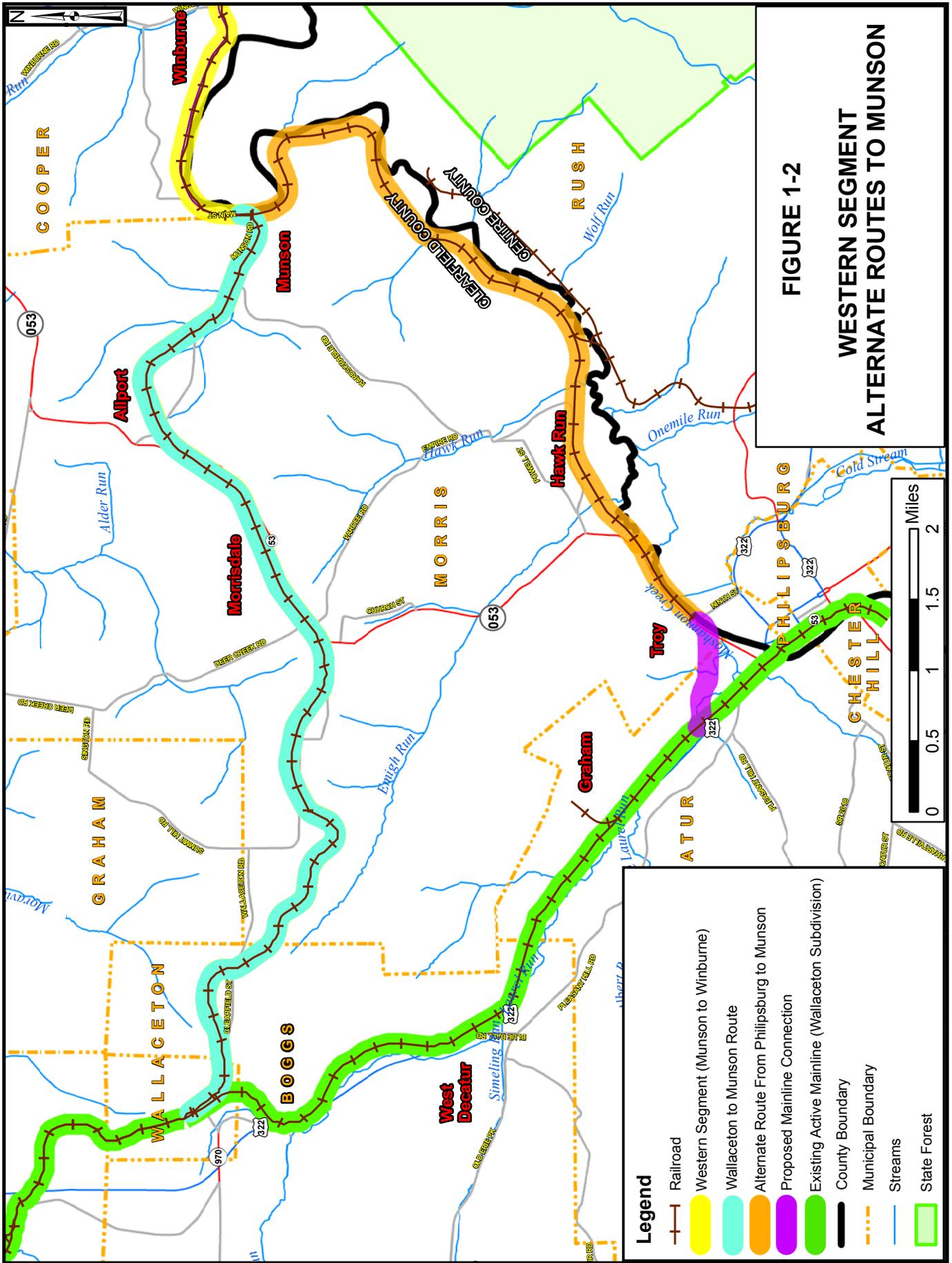


FIGURE 1-2
WESTERN SEGMENT
ALTERNATE ROUTES TO MUNSON

a decision in that docket served November 5, 1993, the ICC issued a Certificate of Interim Trail Use (CITU) under the Trails Act, 16 U.S.C. § 1247(d), pursuant to which Conrail entered into a rail banking/interim trail use agreement with the Headwaters Charitable Trust (HCT).⁷ Today, the Eastern Segment is maintained and operated by HCT (in cooperation with the Snow Shoe Rails-to-Trails Association [SSRTA]) as part of a 19-mile multi-use trail that encompasses the entire Snow Shoe Industrial Track and extends east of RJCP's proposed reactivation.

NS acquired Conrail's rights with respect to the Snow Shoe Industrial Track through the transactions approved by the Board in CSX Corp. et al.—Control—Conrail Inc. et al., 3 S.T.B. 196 (1998) and CSX Corp. and CSX Transp., Inc., Norfolk S. Corp. and Norfolk S. Ry. Co.—Control and Operating Leases/Agreements—Conrail Inc. and Consol. Rail Corp., FD 33388 (Sub-No. 94) (STB served Nov. 7, 2003). RJCP now seeks to invoke the exemption from 49 U.S.C. § 10902 at 49 C.F.R. § 1150.41 to acquire the residual common carrier rights and obligations of NS on the Eastern Segment, in R.J. Corman R.R. Co./Pa. Lines Inc.—Acquis. and Operation Exemption—Line of Norfolk S. Ry. Co., FD 35143.

In 1995, Conrail abandoned additional lines in the area that it referred to as the Snow Shoe Cluster, Consol. Rail Corp. – Aban. Exemption – Clearfield and Centre Cntys., Pa., AB 167 (Sub-No. 1146X) (ICC served Sept. 8, 1995). The Snow Shoe Cluster abandonment included the Wallaceton to Munson Route and also included the Alternate Route from Philipsburg to Munson (formerly known as the Philipsburg Industrial Track). Unlike the Eastern Segment, these lines were not rail banked, and the abandonments were consummated, thereby removing this property from the national rail transportation system and the Board's jurisdiction. However, the roadbed on both the Eastern Segment and the Western Segment, including the Wallaceton to Munson Route and the Alternate Route from Philipsburg to Munson, is still largely intact. RJCP would reacquire the right to use the roadbed for active rail use through voluntary sales or, to the extent necessary, by eminent domain.

With its petition, RJCP filed a motion to dismiss that part of the proceeding pertaining to the proposed reactivation of the 9.3-mile rail banked Eastern Segment. RJCP argued that reactivation of the Eastern Segment did not require Board construction and operation authority under Section 10901 or an associated environmental review under NEPA. On July 27, 2009, the Board issued a decision granting RJCP's motion to dismiss the part of the proceeding pertaining to the reactivation of the rail banked Eastern Segment (see Appendix A). The Board found that if RJCP is authorized to complete the Section 10902 transaction proposed in STB Finance Docket No. 35143 discussed above, and if it acquires the rail banked Eastern Segment, RJCP would not need to obtain separate authority under Section 10901 and would be the railroad with the right to reactivate service on that segment of the proposed rail line. The Board also determined that the environmental review in this case will nevertheless encompass the entire 20 miles of proposed rail line (i.e. both the Eastern and Western Segments), to satisfy the NEPA requirements of one of the Board's cooperating agencies, USACE.⁸

⁷ HCT is a private 501(c)(3) non-profit organization headquartered in Dubois, Pennsylvania. HCT's self-proclaimed purpose is to "work to improve quality of life through natural resource conservation projects and grants that result in community improvement, rural economic stability and environmental enhancement."

⁸ See R.J. Corman R.R. Co./Pa. Lines Inc.—Constr. and Operation Exemption—In Clearfield Cnty., Pa., FD 35116 (STB served July 27, 2009).

1.3 PROPOSED ACTION

The Proposed Action would involve construction and operation over the previously abandoned Western Segment and reactivation of service over the rail banked Eastern Segment and would allow RJCP to provide common carrier rail service to a new landfill, quarry, and industrial park being developed by RRLLC near Gorton in Rush Township, Centre County. Because a member of the public identified a potential alternate route for a portion of the Western Segment, SEA has considered an alternative to the Proposed Action, known as the Modified Proposed Action. The Proposed Action is presented in RJCP's petition for exemption filed with the Board and consists of the originally proposed Eastern Segment and the Western Segment. As described above, the Proposed Action's Western Segment would follow the Wallaceton to Munson Route and then continue east to Winburne. The Modified Proposed Action consists of the same Eastern Segment, but the Modified Proposed Action's Western Segment would follow the Alternate Route from Philipsburg to Munson and then continue east to Winburne. Under either of these alternatives, RJCP proposes to construct a single-track line over the approximate 20-mile project length and operate common carrier service over the proposed rail line. NS has agreed to provide line haul service from its interchange with RJCP at Keating.

It is anticipated that RJCP would haul unit trains of municipal solid waste and/or construction and demolition debris inbound from the Keating interchange to RRLLC's proposed landfill and backhaul empty gondola cars filled with sand and gravel outbound from the proposed quarry to Keating. At peak capacity, RRLLC's landfill is anticipated to receive up to 5,000 tons of municipal solid waste per day, and rail transportation of that material is estimated to keep approximately 500 trucks per day (250 loaded and 250 empty) off the local road system. The quarry (to be operated by Glenn O. Hawbaker, Inc.)⁹ is estimated to produce approximately 200,000 tons of sand and gravel annually, and rail transportation of that material would keep approximately 72 trucks per day (36 loaded and 36 empty) off the local road system. In addition, it has recently been determined that it may be commercially feasible to transport the remaining coal on RRLLC's property in backhauled empty gondola cars. Combined with other nearby coal mining operations, it is estimated that Robindale Energy Services, Inc.¹⁰ could ship as much as 30,000 to 50,000 tons of coal per month by rail. Rail transportation of that material is estimated to keep up to 334 trucks per day (167 loaded and 167 empty) off the local road system. Rex Energy Corporation¹¹ currently is seeking to permit a facility in the immediate area of the proposed rail line for processing "frac water" used in the natural gas extraction process in the nearby Marcellus Shale fields of Central Pennsylvania. Rex Energy estimates that it could potentially ship and receive approximately 250 to 300 carloads of water per month via the proposed rail line, which would keep up to 198 tanker trucks per day (99 loaded

⁹ On June 30, 2008, Glenn O. Hawbaker, Inc. submitted a letter of support for RJCP's proposed rail line project to the Board. Glenn O. Hawbaker, Inc.'s proposed sand and gravel quarrying operation, including estimated production quantities, was further detailed by RJCP's attorneys, Fletcher & Sippel LLC, in its April 28, 2009, letter to SEA. See Appendix C.

¹⁰ Robindale Energy Services, Inc. submitted a letter of support for RJCP's proposed rail line project to the Board on June 27, 2008. On April 22, 2009, Robindale Energy Services, Inc., submitted another letter to the Board clarifying the company's holdings and anticipated coal mining operations, including estimated shipping quantities, in the immediate area of RJCP's proposed rail line.

¹¹ Rex Energy Corporation submitted a letter of support for RJCP's proposed rail line project to the Board on June 30, 2008. On March 25, 2009, Rex Energy Corporation submitted another letter to the Board clarifying the company's natural gas drilling operations and proposed "frac water" treatment options, including estimated rail shipping quantities, in the immediate area of RJCP's proposed rail line.

and 99 empty) off the local road system. Other carload traffic associated with RRLLC's proposed industrial park would move as needed. At peak capacity, RJCP anticipates that it would serve the RRLLC development and other local shippers with one or at most two unit trains daily.

Regarding waste traffic, RJCP would not engage in any transloading (the transfer of material to or from truck to rail) or unloading activity. RJCP would only deliver trains to RRLLC, the permitted operator of the landfill, and RRLLC would unload and process such materials pursuant to its permitted authorization. RRLLC's landfill operations would be governed by permits issued by the Pennsylvania Department of Environmental Protection (PA DEP) and USACE.

1.4 PURPOSE OF PROPOSED ACTION

The purpose of the Proposed Action is to provide rail transportation service to a new landfill, quarry, and industrial park being developed by RRLLC near Gorton in Rush Township, Centre County, as well as to several other interested shippers along the line. RJCP has agreed to provide that service over the existing Conrail roadbed from RJCP's station at or near Wallaceton to RRLLC's proposed development, and NS has agreed to provide line haul service via the NS-RJCP interchange at Keating, PA. To that end, RJCP, RRLLC, and NS have agreed to cooperate should RJCP receive Board authority to operate the proposed rail line.

1.5 NEED FOR PROPOSED ACTION

RJCP has stated that the Proposed Action is needed to provide rail transportation service to RRLLC's proposed development site. Currently, there is no rail transportation service to or even near the development site, and the site would not cross the line of any other active or inactive railroad. RJCP has explained, however, that if there is no rail service, trucks on local roads and highways would be used to provide the transportation at issue. It is estimated that RJCP's proposed rail line could keep up to 1,100 trucks per day (550 loaded and 550 empty) off the local road system.

1.6 PROJECT CONTEXT

RRLLC's proposed landfill development project located near Gorton in Rush Township, Centre County, that the Proposed Action would serve, has been subject to substantial public controversy since its inception. A local opposition group, People Protecting Communities (PPC), formed in early 2005 to contest RRLLC's proposed development project. Upon RJCP filing its petition for exemption with the Board, PPC began disseminating information about the proposed rail project on its website (www.stoplandfill.com).

Adding further public and agency controversy to this project is the proposed reactivation of the rail banked Eastern Segment and the associated loss of 9.3 miles of the Snow Shoe Multi-Use Rail Trail. While this trail was established under the rail banking provisions of the National Trails Act and is, by definition, subject to potential future rail reactivation, members of the public and certain state and local governmental agencies have objected to the loss of the trail.

In addition to the Proposed Action and Modified Proposed Action, several other alternatives were evaluated as part of this Draft EIS. These other alternatives include several No-Build and No-Action Alternatives. The primary difference between the No-Build Alternative and the No-Action

Alternative is that the No-Build Alternative relates only to not building a rail line, but does allow for other construction activities or actions to occur, whereas the No-Action Alternative refers to simply that, no change to the status quo. The two options considered under the No-Build Alternative include the construction of a new interchange on Interstate 80 to provide direct vehicular access to RRLLC's proposed development site and the improvement of the existing local road system to do the same. Under the No-Action Alternative, RJCP would not gain access to RRLLC's proposed development site or to other local shippers by any means.

No other build alternatives were evaluated for this project because of the increased level of environmental complexity associated with "off-line" railroad construction when compared to using the existing graded rail bed of a former line. Here, construction within the formerly abandoned and rail banked right-of-way would presumably cause fewer environmental impacts because the land has previously been disturbed and the rail bed remains largely intact. For comparison purposes, construction of a new 20-mile "off-line" railroad alternative having a 66-foot wide right-of-way would impact a minimum 160 acres of varied land uses. These varied land uses would likely include a diverse and scattered mixture of undeveloped (i.e., forestland, old field/herbaceous upland, and wetland) and developed (i.e., residential and commercial) parcels pending the exact location of the alternative. This 160-acre impact estimate does not account for the relatively flat grades (i.e., generally less than 2%) required for new railroad track construction and operation. Achieving this maximum grade in the rolling/mountainous terrain of Clearfield and Centre Counties would likely result in even greater acreage impacts due to new cuts/fills and/or the potential need for switchbacks along the rail line. Any "off line" alternative would have a greater potential to impact threatened and endangered species, historic properties, and community facilities. Residential relocations and the introduction of multiple new grade crossings of state and local roadways where none existed previously would also be unavoidable. Additionally, due to the increased cost and environmental complexity RJCP has stated that it would forego the proposed rail project if forced to build off-line.

1.7 AGENCY RESPONSIBILITIES

1.7.1 Lead Agency

Surface Transportation Board

The Board, pursuant to 49 U.S.C. § 10901, is the federal agency responsible for granting authority for the construction and operation of new rail lines. Accordingly, the Board, through SEA, is the lead agency responsible for the preparation of this EIS.

The Board published its Notice of Intent to Prepare an EIS (NOI), Notice of Availability of the Draft Scope of Study for the EIS, Notice of Scoping Meeting, and Request for Comments on the Draft Scope in the *Federal Register* on January 8, 2009. The scoping comment period concluded on February 24, 2009. Thereafter, the Board published its Notice of Availability of the Final Scope of Study for the EIS (Final Scope) in the *Federal Register* on July 31, 2009.

1.7.2 Cooperating Agencies

U.S. Army Corps of Engineers

SEA specifically invited the appropriate regional office of USACE (Baltimore District) to participate as a cooperating agency due to preliminary indications of the presence of wetlands and watercourses potentially subject to the jurisdictional authority of USACE in the project area. USACE indicated its intent to participate as a cooperating agency in this EIS via written correspondence on October 24, 2008 (see Appendix B). USACE has the responsibility and jurisdictional authority by law for administering the Section 404(b)(1) environmental permitting guidelines of the Clean Water Act (CWA) of 1977. In this capacity, USACE has the authority to regulate portions of the Proposed Action that affect waters of the U.S., including jurisdictional wetlands.

Federal Highway Administration

FHWA expressed its desire to participate as a cooperating agency via e-mail correspondence to SEA on February 9, 2009. Shortly thereafter, on February 19, 2009, FHWA sent written correspondence to SEA formally requesting to participate as a cooperating agency. FHWA pointed to the two alternatives listed under the No-Build Alternative, namely the I-80 Interchange and the Local Road System Upgrade alternative, and the subsequent action that would be required by FHWA should one of these alternatives be selected, as the reason for its participation. On March 16, 2009, SEA formally accepted FHWA's request.

1.7.3 Consultation with Other Agencies

SEA has consulted (by way of written correspondence, telephone conversations, and/or face-to-face meetings) with additional federal, state, and local agencies that may have an interest in the Proposed Action or may potentially be impacted by the Proposed Action and has taken the comments of those agencies into consideration. SEA is also providing a copy of this Draft EIS to appropriate agencies to ensure that they have ample opportunity for review and comment. Appendix B contains documentation of SEA's agency coordination activities conducted for this project, including copies of all agency correspondence.

SEA requested comments from the following federal agencies during the preparation of the Draft EIS:

Federal Emergency Management Agency (FEMA)

FEMA, among other activities, identifies 100-year floodplains. Consultation with FEMA is intended to verify compliance with the National Flood Insurance Act of 1988 and Executive Order 11988 concerning construction in floodplains.

Federal Railroad Administration (FRA)

The mission of FRA is to promulgate and enforce rail safety regulations; administer railroad assistance programs; conduct research and development in support of improved railroad safety and national rail transportation policy; provide for the rehabilitation of Northeast Corridor rail passenger service; and consolidate government support of rail transportation activities.

National Park Service (NPS)

Established in 1916 by an act of Congress popularly known as the Organic Act, NPS is charged with the conservation of national parks, monuments, and reservations.

Natural Resources Conservation Service (NRCS)

This agency, formerly the soil conservation service, is charged with protecting farmlands, particularly those classified as prime, unique, or of state and local importance.

U.S. Department of Housing and Urban Development (HUD)

HUD's mission is to increase homeownership, support community development and increase access to affordable housing free from discrimination.

U.S. Department of Health and Human Services (HHS)

HHS is the United States Government's principal agency for protecting the health of all Americans and providing essential human services, especially for those who are least able to help themselves.

U.S. Environmental Protection Agency (USEPA)

USEPA has broad oversight authority and implementing responsibility for many federal environmental laws, including the Clean Air Act (CAA), CWA, Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); Toxic Substances Control Act (TSCA); and the Resource Conservation and Recovery Act (RCRA).

U.S. Fish and Wildlife Service (USFWS)

USFWS is the federal agency with primary expertise in fish, wildlife, and natural resources issues. Pursuant to Section 7 of the Endangered Species Act (ESA) of 1973, USFWS is responsible for the review of federal agency actions with respect to potential impacts to federally listed threatened and endangered (T&E) species.

SEA also requested and received comments from the following state and local agencies during the preparation of this EIS:

- Pennsylvania Department of Conservation and Natural Resources (PA DCNR)
- Pennsylvania Department of Environmental Protection (PA DEP)
- Pennsylvania Department of Transportation (PennDOT)
- Pennsylvania Fish and Boat Commission (PFBC)
- Pennsylvania Game Commission (PGC)
- Pennsylvania Historical and Museum Commission (PHMC), Bureau for Historic Preservation
- Clearfield County Planning Department
- Centre County Planning and Community Development Office
- Centre County Historical Society
- Cooper Township (Clearfield County)

SEA requested, but did not receive comments from the following state and local agencies during the preparation of this EIS:

- Pennsylvania Department of Agriculture (PA DOA)
- Pennsylvania Department of Community and Economic Development (PA DCED)
- Bradford Township (Clearfield County)
- Boggs Township (Clearfield County)
- Morris Township (Clearfield County)
- Decatur Township (Clearfield County)
- Wallacetown Borough (Clearfield County)
- Rush Township (Centre County)
- Snow Shoe Township (Centre County)

SEA also received comments from the following local groups/organizations regarding the Proposed Action:

- People Protecting Communities (PPC)
- Headwaters Charitable Trust (HCT)
- Snow Shoe Rails-to-Trails Association (SSRTA)
- Cooper Township Municipal Authority
- Central Mountains All-Terrain Vehicle Association, Inc.

1.8 SCOPING AND PUBLIC INVOLVEMENT

On January 8, 2009, SEA published its NOI to Prepare an EIS and Draft Scope of Study in the *Federal Register* and on the Board's website. SEA placed notice of the public scoping meeting in two local newspapers, including the *Progress News* on January 21, 2009, and the *Centre Daily Times* on February 6, 2009. Additionally, SEA mailed invitation letters to 31 federal, state, and local agencies, including the project area municipalities and counties, as well as local elected officials. See Appendix A.

The scoping meeting was held on the evening of February 10, 2009, in the Philipsburg-Osceola Senior High School gymnasium. The meeting was conducted in an open house/plans display style format to allow attendees to provide comments and ask questions of SEA and its independent third-party consultant, Skelly and Loy, Inc. of Harrisburg, Pennsylvania, on a one-on-one basis at each of the display boards. The 130 individuals who attended the scoping meeting included project-area citizens, representatives of various organizations, elected officials, and agency personnel. In total, SEA received:

- 100 comment forms from individuals attending the scoping meeting
- 13 comment letters
- 17 individual comments filed electronically

As previously noted, a member of the public at the scoping meeting suggested that an alternate route to Munson was available that would potentially avoid and/or minimize many of the socioeconomic, transportation and safety, noise, and land use impacts associated with a portion of RJCP's proposed

Western Segment. After investigating this alternate route, SEA agreed that it might avoid or minimize potential environmental impacts and asked RJCP to determine its engineering feasibility. Following the public scoping meeting, RJCP conducted preliminary field reconnaissance to determine the engineering feasibility and estimated environmental impacts associated with this Alternate Route from Philipsburg to Munson. Based on the preliminary investigations, RJCP did not see any major engineering or construction constraints that would be associated with this alternate route. RJCP concurred that the Alternate Route from Philipsburg to Munson would potentially avoid and/or minimize many of the impacts associated with a portion of its original proposed Western Segment. Thus, RJCP presented (via written correspondence dated April 30, 2009) this alternate route to SEA as its new preferred alignment for this portion of the Western Segment. See Appendix C.

Due to this additional alternative route for a portion of the Western Segment, SEA sent another consultation letter to the federal, state, and local agencies soliciting agency input. See Appendix B. In addition, the Final Scope of Study, which was served by the Board on July 31, 2009, included a discussion of this potential change in routing, which is one of the alternatives considered in this Draft EIS.

Many of the concerns that emerged through the scoping process involved RRLLC's proposed landfill, quarry, and industrial park development near Gorton in Rush Township, Centre County, and the planned transport of municipal solid waste by RJCP. Concerns voiced included the potential for odors, vermin/vectors for disease, containment during transport, leakage during transport, environmental damage/degradation associated with a potential derailment, and quality of life issues associated with adjacent property owners. To address these comments, the Final Scope of Study for this Draft EIS encompasses these issues, and these issues are addressed in this Draft EIS.

As part of the environmental review process to date, SEA has conducted broad public outreach activities to inform the public about the Proposed Action and to facilitate public participation. Project information was made available to federal, state, and local agencies, including the project area municipalities and counties, as well as local elected officials and the general public at the scoping meeting. SEA placed notices in local newspapers and mailed letters to the local municipalities, government officials, and elected officials representing potentially affected areas with information about the public scoping meeting. Additionally, SEA consulted with and will continue to consult with federal, state, and local agencies; affected municipalities; and all interested parties to gather and disseminate information about the project. Appendices A and B provide additional information on the scoping process, public outreach and agency coordination activities conducted by SEA. The Final Scope of Study for this EIS, contained in Appendix A, summarizes the comments received at the scoping meeting and the written comments received in response to the Draft Scope of Study.

1.9 RRLLC'S PROPOSED LANDFILL

As previously mentioned, SEA received numerous comments during the scoping process regarding RRLLC's proposed landfill/industrial development project. Commenters requested that the EIS include a study of alternative locations for the landfill, as well as a complete analysis of all potential impacts associated with the development and operation of the landfill. PPC and other commenters asserted that RJCP's proposed rail line and RRLLC's proposed landfill are connected actions; closely

related actions that should be studied in the same EIS pursuant to CEQ's regulations implementing NEPA. PPC alleged that "the only driver" behind RJCP's proposed rail line is RRLLC's proposed landfill and industrial development project. PPC also argued that RJCP's proposed rail line is not commercially feasible without RRLLC's proposed landfill.

RJCP responded by letter on April 28, 2009, and again on July 28, 2009, indicating that RRLLC's proposed landfill would be developed and operated regardless of the rail line. RJCP pointed out that the extent to which RRLLC would have to rely on motor vehicle transportation to and from its proposed development site (via improvements to existing local roads and/or construction of a proposed new interchange on I-80) would depend on the Board's decision in this proceeding. RJCP stated that RRLLC's preferred mode of access to its development site would be via rail transportation because rail service would provide the most economical means for accomplishing RRLLC's transportation objectives while at the same time minimizing the impact of transportation to and from the landfill on the environment, surrounding communities, and highway infrastructure. RJCP pointed to a number of other potential shippers that have expressed strong interest in the use of this line should it be approved by the Board. RJCP argued that because development and operation of the proposed landfill would take place regardless of whether the proposed rail line were constructed and operated, the landfill and the proposed rail line are not connected actions, and thus, the landfill should not be considered to be a direct or indirect effect of the railroad project. RJCP also addressed financial viability concerns raised during scoping, explaining that it has never claimed that it would rely on landfill generated revenues to support the construction and operation of the proposed rail line.

The development and operation of RRLLC's proposed landfill is not within the Board's jurisdiction and requires no authority from the Board. Moreover, the record here supports the conclusion that the landfill would be developed and operated regardless of the action before the Board. As previously noted, RJCP has stated that if this rail line were not authorized and built, RRLLC would use trucks to serve the transportation needs of the landfill and industrial park. RJCP has also provided detailed information regarding the improvements to the existing local road system and construction of the new I-80 interchange that would be needed to support the increased truck traffic.¹²

Because the landfill is not a facility that is part of rail transportation, the Board has no jurisdiction over it and the broad federal preemption in 49 U.S.C. § 10501(b) would not apply to it. Construction and operation of the landfill would, therefore, be subject to all federal, state, and local regulations that would apply to any landfill. Specifically, the proposed landfill would require a federal permit pursuant to Section 404 of the CWA, thus necessitating a NEPA review by USACE. Additionally, and perhaps more importantly, RRLLC's proposed landfill would require a Waste Management Permit from PA DEP. Applicants for PA DEP Waste Management Permits must complete an extensive Environmental Assessment, which evaluates a wide range of potential impacts. PA DEP will not approve such a permit unless it finds that the social and economic benefits of such an

¹² Detailed information regarding proposed improvements to the existing local road system and construction of the new I-80 interchange was taken from the Point of Access Study for the I-80/Gorton Road Interchange, dated November 14, 2006, prepared by Rettew Associates, Inc. located in Lancaster, Pennsylvania. A Point of Access Study is required by FHWA when a new interchange or other significant change in access is proposed on a segment of the existing Interstate Highway System. The Point of Access Study evaluates the need for the proposed interchange along with its anticipated operational, environmental and societal impacts. The Point of Access Study is prepared in order to obtain conceptual approval from FHWA for the proposed change in access.

operation outweigh its environmental harms. Thus, there will be environmental review by the appropriate government entities before the landfill could be built and become operational.

After reviewing all of the facts presented, Board precedent, NEPA regulations, and relevant court decisions, SEA has determined that RRLLC's proposed landfill should be addressed in this EIS as part of the "cumulative impacts" analysis. As discussed in more detail below, a study of alternatives to the landfill and a separate analysis of all potential impacts from landfill development and operation is not appropriately within the scope of the environmental review process for this rail construction proceeding.

1.9.1 Relevant Considerations in Determining the Extent to which the EIS Should Address the Landfill

NEPA requires federal agencies to consider the environmental consequences "in every recommendation or report on major federal actions significantly affecting the quality of the human environment."¹³ CEQ has defined "major federal action" to include projects regulated or approved by federal agencies.¹⁴ The purpose of NEPA is to focus the attention of the government and the public on the likely environmental consequences of a proposed agency action before it is implemented, in order to minimize or avoid potential negative environmental impacts.¹⁵ NEPA does not apply to state, local, or private actions.¹⁶

Connected Actions

The CEQ regulations at 40 C.F.R. § 1508.25(a)(1) define connected actions as actions that "are closely related and thus should be discussed in the same impact statement. Actions are connected if they: (i) automatically trigger other actions which may require environmental impact statements; (ii) cannot or will not proceed unless other actions are taken previously or simultaneously; (iii) are interdependent parts of a larger action and depend on the larger action for their justification." Thus, if actions are functionally or economically interdependent, they should be considered together (i.e., so closely related that it would be irrational not to consider them together, such as two segments of one federally funded highway). But if the actions at issue have independent utility (i.e., could exist without each other, though they would benefit from the presence of each other), they need not be considered together in one EIS.¹⁷

Typically, connected actions have been found to be two federal actions implemented by the same federal agency.¹⁸ For example, in Wetlands Action Network v. U.S. Army Corps of Engineers, 222 F.3d 1105, 1116-1118 (9th Cir. 2000), the 9th Circuit Court of Appeals stated that where an agency does not have independent jurisdiction over a related non-federal project, the fact that the proposed action before the agency would not occur without the related non-federal project taking place is insufficient to bring the related non-federal action within the agency's jurisdiction for the purposes

¹³ 2 U.S.C. § 4332(2)(C).

¹⁴ 40 C.F.R. § 1508.18.

¹⁵ Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 371 (1989) (Marsh).

¹⁶ Atlanta Coalition on the Transp. Crisis, Inc. v. Atlanta Regional Comm'n, 599 F.2d 1333, 1344 (5th Cir. 1979)

¹⁷ See Fritiofson v. Alexander, 772 F.2d 1225, 1242-42 (5th Cir. 1985) and Sylvester v. U.S. Army Corps of Engineers, 884 F.2d 394, 400 (9th Cir. 1989) (Sylvester).

¹⁸ See Thomas v. Peterson, 753 F.2d 754 (9th Cir. 1985).

of NEPA review. In this proceeding, the proposed landfill is not subject to the Board's jurisdiction; nor does it require any approvals from the Board. In addition, the development and operation of the landfill project can proceed independently of the proposed railroad project addressed in this EIS.

Cumulative Impacts

NEPA requires agencies to consider three types of impacts: direct; indirect; and cumulative.¹⁹ Direct and indirect impacts are both caused by the action. Direct impacts occur at the same time and place, while indirect impacts are later in time or farther removed in distance, but are still reasonably foreseeable.²⁰ A cumulative impact is the “incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions.”²¹ This means that the agency's cumulative impacts analysis must take into consideration actions that are not caused by the proposed action but that are close enough geographically and temporally to potentially affect the same resources as the proposed action.²² For the cumulative impacts analysis, there is no requirement of interdependence – only that projects be “related.” Thus, the test for determining whether actions are connected for purposes of NEPA review is more rigorous than the test for determining whether the cumulative impacts of two separate projects must be considered together.

The U.S. Supreme Court's Recent Decision Regarding NEPA

In *Dep't of Transp. v. Public Citizen*, 541 U.S. 752, 769 (2004) (*Public Citizen*), the U.S. Supreme Court stated that “inherent in NEPA and its implementing regulations is a ‘rule of reason,’ which ensures that agencies determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decision-making process.”²³ The Court went on to state that the “NEPA EIS requirement serves two purposes. First, ‘it ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts.’ . . . Second, it ‘guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decision-making process and the implementation of that decision.’”²⁴ Thus, information that does not inform the agency's decision need not be included in an EIS.

Courts give broad deference to the agency determinations of the appropriate scope for the environmental review.²⁵ The Board's environmental regulations do not set forth a specific test for determining whether and how to consider particular related actions in the environmental review process. SEA has addressed this issue in past proceedings primarily by employing a “but for” test.²⁶

¹⁹ 40 C.F.R. § 1508.25(c).

²⁰ 40 C.F.R. § 1508.8.

²¹ 40 C.F.R. § 1508.7.

²² See *Considering Cumulative Effects under the National Environmental Policy Act* (CEQ, 1997).

²³ *Public Citizen*, 541 U.S. at 767, citing *Marsh*, 490 U.S. at 373-74.

²⁴ *Public Citizen*, 541 U.S. at 767-68, quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

²⁵ See *Sylvester*, 884 F.2d at 399 (NEPA regulations developed by an individual Federal agency are entitled to deference).

²⁶ See *Riverview Trenton R.R. Co. – Petition for an Exemption from 49 U.S.C. § 10901 to Acquire and Operate a Rail Line in Wayne Cnty., Mich.*, FD 34040 (EA served October 15, 2001).

Under the “but for” test the agency includes as part of its analysis those actions that would not occur “but for” the action that requires the agency’s approval. However, the Supreme Court’s recent decision in *Public Citizen* clarifies that under NEPA, a “but for” causal relationship is not enough to make an agency responsible for a particular effect under NEPA and the relevant regulations.²⁷ Rather, NEPA requires analysis of an effect only where there is a reasonably close causal relationship between the environmental effect and the alleged cause, analogous to the doctrine of proximate cause from tort law.²⁸

Furthermore, the Supreme Court now has ruled that agencies may reasonably limit their analysis to issues that are part of the agency’s own decision-making process.²⁹ The Court held that “where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency’s actions cannot be considered a legally relevant ‘cause’ of the effect,” and such effects need not be studied in the agency’s environmental review document.³⁰ The Supreme Court also stated that CEQ’s “cumulative impacts” regulation does not change this analysis, since cumulative impacts are defined as incremental impacts of a proposed action when added to other actions. Agencies are not required to treat cumulative impacts of other actions as an effect of the proposed action.³¹

Based on *Public Citizen* and the other relevant judicial precedent, SEA believes that, apart from the analysis of cumulative effects, the effects of related actions need only be considered in the environmental review process if:

1. The action that the agency must approve can reasonably be said to proximately cause the related actions; and
2. The agency has the authority to prevent the related actions (and thus any effects caused by the related actions) from taking place.

SEA has applied this test to the Proposed Action addressed in this EIS.

1.9.2 Appropriate Analysis of the Landfill

Because the landfill and the rail line are related to the extent that the rail line would serve the landfill and because development and operation of the landfill has the potential to impact some of the same resources as the rail line at about the same time as the rail line construction, operation, and reactivation, analysis of the landfill is an appropriate part of the cumulative impacts analysis. Thus, this Draft EIS contains an analysis of the combined effects of the landfill and the rail line upon the environment in Chapter 5, addressing cumulative impacts.

²⁷ *Public Citizen*, 541 U.S. at 767. See also *National Committee for the New River v. FERC*, 373 F.3d 1373 (D.C. Cir. 2004) (rejecting argument that “but for” test requires EIS on a proposed pipeline extension to consider the impacts of two non-jurisdictional generating plants).

²⁸ *Public Citizen*, 541 U.S. at 767, citing *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983).

²⁹ *Public Citizen*, 541 U.S. at 767-68.

³⁰ *Id.* at 770.

³¹ *Id.* at 769-770.

As discussed above, RJCP has explained that the proposed rail line and the landfill are not interdependent and that RRLLC would develop and operate the landfill regardless of whether RJCP's proposed rail line is constructed. If the rail line were not built, according to RJCP, RRLLC would use trucks to transport waste to the landfill via the existing local road system. Thus, NEPA does not require that the EIS study alternatives to the landfill and environmental effects caused by the landfill itself. Rather, the available information here shows that RJCP's proposed rail line is not the cause of the landfill and that the Board has no authority to prevent the development and operation of the landfill or any resulting environmental effects. The landfill would be built regardless of the action before the Board, so analysis of the landfill would not inform the Board's decision on the proposed construction and operation of this rail line. Moreover, the Board has no authority to impose any mitigation on RRLLC; thus, the Board could not act on whatever input the public could provide regarding the landfill.³² In sum, the two projects are not interdependent, and the rail line is not the proximate cause of the landfill; thus, the landfill should not be included as part of the proposed action in the environmental review, and it would be inappropriate to consider the landfill to be a direct or indirect effect of this rail transportation project.

SEA is certainly aware of the concerns expressed by members of the local community about the potential environmental effects of the proposed landfill itself. But the proper forum to address these concerns is the other regulatory and permitting processes that will specifically regulate the landfill project. Neither NEPA nor the relevant case law supports the conclusion that the landfill should be considered as part of the Proposed Action under the facts and circumstances presented.

1.10 EIS ORGANIZATION AND FORMAT

This EIS is organized and formatted in a manner that is consistent with NEPA and the CEQ regulations found at 40 C.F.R. § 1502.10. It is organized in such a way as to provide clear and concise information on the Proposed Action and alternatives to agency decision-makers and the public. The EIS describes the Proposed Action, alternatives to the Proposed Action, the existing project area environment, and the potential environmental impacts associated with the Proposed Action and alternatives. Chapters and specific topics within each chapter are outlined in the Table of Contents and numerically coded to aid the reader in navigating through the document. Tables and figures are listed numerically by the chapter in which they occur. Appendices are denoted with alphabetic characters and are included at the end of the EIS.

The following is a list and a brief description of the components of this EIS:

Executive Summary

The Executive Summary provides a brief description of the Proposed Action, the purpose and need for the Proposed Action, the alternatives to the Proposed Action evaluated in the EIS, and the potential environmental impacts associated with each alternative. The Executive Summary also contains the conclusion and recommendations regarding the Preferred Alternative and mitigation measures identified to offset the Preferred Alternative's environmental impacts.

³² See *Public Citizen*, 541 U.S. at 767-68 (the goals of NEPA are not served by including information and input from the public upon which the agency has no ability to act).

List of Acronyms and Abbreviations

Glossary

The Glossary provides definitions of technical terms that may be unfamiliar to the reader.

Chapter 1 – Overview and Purpose and Need for Action

This chapter provides a comprehensive overview of the Proposed Action, including relevant background information, the project purpose and need, and the overall project context. The alternatives evaluated in the EIS are presented in a general format, and the overall content and format of the EIS is outlined. Chapter 1 also summarizes the scoping, agency coordination, and public involvement processes.

Chapter 2 – Proposed Action and Alternatives

Chapter 2 describes the Proposed Action in detail including specific engineering and constructability information. Alternatives to the Proposed Action are also presented and evaluated on a comparative basis.

Chapter 3 – Affected Environment

Chapter 3 describes the existing project area environment, focusing on those natural, cultural, and socioeconomic resources that play a key role in the project's environmental impact assessment. Upon reading this chapter, one should have a clear understanding of the existing environmental conditions within the greater project area. This chapter sets the stage for assessing the Proposed Action's environmental impacts.

Chapter 4 – Environmental Impacts

This chapter outlines the Proposed Action's environmental impacts by individual resource category. Environmental impacts of the other alternatives are also presented for comparative analysis. The highlight of this chapter is a comprehensive Environmental Impact Summary Table, which documents the environmental impacts of the Proposed Action side-by-side with the environmental impacts of the other alternatives.

Chapter 5 – Cumulative Impacts

This chapter describes other past, present, and reasonably foreseeable future actions in the general project vicinity that, when combined with the Proposed Action, were considered to have the potential to result in cumulative environmental impacts beyond that of the Proposed Action alone.

Chapter 6 – Mitigation

This chapter documents the recommended mitigation measures to be implemented to avoid, minimize, eliminate, or offset the potential environmental and socioeconomic impacts associated with the Proposed Action.

Chapter 7 – Short-Term Use versus Long-Term Productivity of the Environment

Chapter 7 analyzes the short-term uses of the environment associated with project construction activities in comparison to the Proposed Action's more long-term or permanent impacts to environmental productivity.

Chapter 8 – Irreversible and Irretrievable Commitment of Resources

This chapter summarizes the irreversible and irretrievable commitment of resources associated with implementation of the Proposed Action.

Chapter 9 – List of Preparers

This chapter lists the names and educational qualifications of the preparers of this EIS.

Chapter 10 – List of Agencies, Organizations and Persons to Whom Copies of the EIS are Sent

This chapter is self-explanatory.

References

The References contain citations to all the published sources of information used in the preparation of this EIS.

Appendices

The Appendices consist of supplementary materials prepared in connection with this EIS, as well as the agency correspondence on file for the project. Certain technical files containing detailed calculations, impact evaluations, resource summaries, field notes, assessment methodologies, and other supplementary materials have also been included in the Appendices, as appropriate.

1.11 REQUEST FOR COMMENTS ON THE DRAFT EIS

The public and any interested parties are encouraged to submit written comments on all aspects of this Draft EIS. SEA will consider all comments in preparing the Final EIS, which will include responses to all substantive comments, and SEA's final conclusions on potential impacts, alternatives, as well as SEA's final recommendations on mitigation. All comments must be submitted within the comment period, which will close September 28, 2010. When submitting comments on the Draft EIS, be as specific as possible and substantiate your concerns and recommendations.

Please mail written comments on the Draft EIS to the address below.

Surface Transportation Board
395 E Street, SW
Washington, DC 20423

To ensure proper handling of your comments, please mark your submission:

Attention: Danielle Gosselin
Section of Environmental Analysis
Environmental Filing FD 35116

Written comments may also be filed electronically on the Board's website, www.stb.dot.gov, by clicking on the "E-FILING" link.

1.12 PUBLIC MEETING

In addition to receiving written comments on the Draft EIS, SEA will hold a public meeting to solicit verbal comments. At the meeting, SEA will give a brief presentation, followed by an opportunity for interested parties and members of the general public to make oral comments. SEA will make arrangements to have a stenographer present at the meeting to record the oral comments. Written comments may also be submitted at the meeting. The meeting will be held at:

Philipsburg-Osceola Area Senior High School
502 Philips Street
Philipsburg, PA 16866
Tuesday, September 14, 2010
6-9 P.M.

The facility where this meeting is being held is accessible to persons with disabilities.

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